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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,054	11/25/2003	Carol Jeffcoat	HO2-0002	7777

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EXAMINER

CHUO, TONY SHENG HSIANG

ART UNIT PAPER NUMBER

1746

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/723,054	JEFFCOATE, CAROL	
	Examiner	Art Unit	
	Tony Chuo	1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 12-25 is/are rejected.
- 7) ☒ Claim(s) 19-25 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/29/04, 11/25/03</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-11, drawn to fuel cell stack, classified in class 429, subclass 32.
 - II. Claims 12-25, drawn to a method of controlling the fuel cell, classified in class 429, subclass 13.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process. The fuel cell stack does not have to be operated by measuring the temperature and adjusting the voltage.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Chris Boehm on 3/21/06 a provisional election was made with traverse to prosecute the invention of Group II, claims 12-25.

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Affirmation of this election must be made by applicant in replying to this Office action.

Claims 1-11 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

2. Figures 1A and 1B should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities: on page 15, line 4, "6A and B" should be changed to "6A and 6B". Appropriate correction is required.

Claim Objections

4. Claims 19-25 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 19, 20,

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and 22-25 appear to be dependent upon claim 18. Claim 21 appears to be dependent upon claim 19.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 12, 13, 16-18, 20, and 24-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Enjoji et al (US 2004/0101728). Regarding claims 12, 13, 17, 18, and 20, the reference teaches a method for controlling the temperature of the fuel cell stack comprising several thermoelectric layers, each layer comprising a Peltier device "62a", "62b", "62c", "62d", "62e" in electrical communication with a power supply "60" where each layer is in contact with at least one of the fuel cell assemblies and a heat sink "108" in thermal contact with the fuel cell stack (See Figures 1 and 11). Regarding claims 16 and 24, the reference teaches a fuel cell assembly that is a solid polymer electrolyte fuel cell which is a proton exchange membrane fuel cell (See paragraph [0004]). Regarding claim 25, the reference teaches fuel cells 14a through 14e that are each heated to a predetermined temperature and controlled at that temperature (See Figure 1 and paragraph [0052]). Therefore, the temperature is substantially uniform across the fuel cell assembly and the fuel cell stack.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 14, 15, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enjoji et al (US 2004/0101728). The Enjoji reference is applied to claims 12, 13, 16-18, 20, and 24-25 for reasons stated above. However, the reference does not expressly teach a power source that is a battery or fuel cell. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Enjoji fuel cell to include a power source that is a battery or a fuel cell because it is well known in the art that thermoelectric devices are compatible with multiple power sources including batteries and fuel cells.

9. Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enjoji et al (US 2004/0101728) in view of Walsh (US 2003/0044662). The Enjoji reference is applied to claims 12, 13, 16-18, 20, and 24-25 for reasons stated above. However, the reference does not expressly teach a thermoelectric layer comprising one or more temperature sensing devices that are thermocouples connected via control circuitry to the power sources. The Walsh reference does teach a thermocouple coupled to a control circuit for regulating the temperature of the fuel cell (See paragraph [0026]). Therefore, it would have been obvious to one of ordinary skill in the art at the

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time the invention was made to modify the Enjoji fuel cell to include thermocouples associated with each Peltier device that are connected to the power source via a control circuit so that uniform temperature can be maintained throughout the fuel cell stack.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony Chuo whose telephone number is (571) 272-0717. The examiner can normally be reached on M-F, 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TK 3/23/06



MICHAEL BARR
SUPERVISORY PATENT EXAMINER